presumes Examiner also intended to list claims 7 and 8 as rejected over the same art cited in rejecting claims 5 and 6.

Thus, claims 1-26 are presented for examination. For the reasons set forth below, these claims are believed to be in condition for allowance.

Objection to drawings

Applicant notes Examiner objected to the drawings for reasons set forth in form PTO-948 which Examiner asserts was enclosed with the Official Office Action. Applicant is more than willing to address the objections raised in form PTO-948. However, after having reviewed our records concerning this application, Applicant has not found a form PTO-948 and asserts that this form was not enclosed.

Applicant respectfully requests that a form PTO-948 indicating the reasons for objection to the drawings be sent. Upon receipt, Applicant is prepared to file a supplemental response to address those specific objections. Therefore, Applicant submits that Applicant has been as fully responsive to this objection as is practicable.

Rejection of Claim 1 under 35 U.S.C. § 102(b) over Baron et al.

Claim 1 stands rejected under 35 U.S.C. § 102(b) over Baron et al. (U.S. Patent 5,809,481).

The defense of anticipation is improper. For a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference; and those elements must be arranged or connected together in a single reference in the same way as

specified in the patent claim. The cited reference does not meet that test. Also, all elements of the claims must be considered. Claims are to be construed in light of the specification as it would be understood by those skilled in the art. Arbitrary definitions are to be avoided, as the words of the claim cannot be read in a vacuum, but must be viewed in the context of the application at hand.

Significant claim elements have been disregarded in this instance. For example, consumer-directed labels affixed to products are absent in the reference. The coupling to a product of a computer-readable medium, readable by a computer of an arbitrary user, by way of the product label is also absent from the reference. Applicant does not find a suggestion by the reference of the product structure that functions as the object of the label. Neither does Applicant find in the reference a hint at use of a label in conjunction with products.

An advantage of the claimed invention is that computer-readable labels affixed to products allows the vendor or manufacturer to convey to the purchaser of the product information which is specific to that particular product or which is so related as to be targeted to that user.

Applicant respectfully submits that claim 1 is patentably distinct over Baron et al.

Rejection of Claims 11-12, 14, 18, 19, and 23-26 under 35 U.S.C. § 102(b) over Dlugos, Sr. et al.

Claims 11-12, 14, 18, 19, and 23-26 stand rejected under 35 U.S.C. § 102(b) over Dlugos Sr. et al. (U.S. Patent 5,153,842).

The defense of anticipation is again improper here. Claim 11 relates to products and a computer-readable medium attached to the product by the label. Products are articles in the retail

market, labeled for sale. Apparently, Dlugos, Sr. et al. relates to shipping containers transported marked with codes for handling by common carriers or for storage and retrieval in warehouses. The labels and the product relationships thereof of the claimed invention are not identical to nor related to the parcels taught in Dlugos, Sr. et al.

Furthermore, the computer-readable medium is fundamentally different from that taught in Dlugos, Sr. et al. The computer-readable medium of the claimed invention is a medium readable by the conventional computer of an arbitrary purchaser. The preferred embodiment is a CD-ROM. Apparently, Dlugos, Sr. et al. discloses a computer-readable medium which requires special interface equipment such as a bar code reader or special interface cables, all dedicated to a system associated with the distribution network, not a retail purchaser, and not related to an arbitrary computer of a retail purchaser.

Applicant does not find labels affixed to products. Any suggestion of such seems to be absent in the reference. In addition, Applicant finds no suggestion or disclosure of a computer-readable medium which may be read by an arbitrary purchaser's computer. Applicant respectfully submits that claim 11 is in condition for allowance, clearly defining over Dlugos Sr. et al.

As to claim 18, tethers are absent in the reference so far as Applicant can find. Claim 18 recites a label attached to a product by way of a tether. Applicant finds no suggestion in the reference of a tether configured as recited by Applicant. Indeed, Applicant finds no mention of a tether by Dlugos, Sr. et al. Applicant respectfully submits that claim 18 distinguishes over Dlugos, Sr. et al., and is in condition for allowance.

Rejection of Claims 2 and 4 under 35 U.S.C. § 103 over Baron et al. in view of Dlugos, Sr. et al.

Claims 2 and 4 stand rejected under 35 U.S.C. § 103 over Baron (U.S. Patent 5,809,481) in view of Dlugos, Sr. et al. (U.S. Patent 5,153,842).

Claim 4 recites "...the label is shaped to provide the first information **through a** shape." (Bold added) Machines do not read information based on the shape of an object without very expensive unique extra hardware. Information communicated by way of the shape of a label is meant to convey the information to a human rather than a machine. Dlugos, Sr. et al. does not disclose or suggest providing information through the shape of the label.

Shapes can be very powerful in conveying information, particularly in a marketing or retail context. (See Spec. pg. 34, lines 4-7) Shapes are often trademarked strictly based on the message the particular shape conveys. For example shapes such as the bow or cross symbol for Chevrolet®, the distinctive double-arched-M shape for McDonald's®, or the distinct shape created by the Olympic rings. These shapes quickly alert the consumer to the particular vendor and the quality of the product.

In addition, shapes are very powerful in conveying contextual information. For example articles in the shape of a saw blade, personal computer, or coffee mug immediately inform the consumer the article relates to construction tools, computer or information technology, and coffee or other beverages.

Neither Baron et al. nor Dlugos, Sr. et al. disclose or suggest configuring a tag such that the tag conveys information through its shape. Therefore, Applicant respectfully asserts that claim 4 is patentably distinct over Dlugos, Sr. et al. and is allowable.

Rejection of Claims 5 and 6 under 35 U.S.C. § 103 over Baron et al. as applied to claim 1 and further in view of Christensen et al.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103 over Baron (U.S. Patent 5,809,481) as applied to claim 1 and further in view of Christensen et al. (U.S. Patent 5,710,886).

Claim 5 relates to a portable and easily transferable medium which is readable by an arbitrary purchaser's computer. The medium of claim 5 is affixed to the product. The medium is received by the purchaser. The medium is to be read by the purchaser's computer. Applicant finds no medium readable directly by the purchaser's computer in Baron et al. The medium in Baron et al. requires special hardware dedicated to the task and owned by the entity managing a closed system. Such is not an arbitrarily readable file readable by an arbitrary computer owned by a purchaser independent from the originator of a product so labeled.

Applicant respectfully asserts that claim 5 is patentably distinct over Dlugos, Sr. et al. and is allowable.

Claim 6 relates to the kinds of products the label is associated with. Apparently, Christensen et al. discloses an electronic couponing system. Applicant finds no labels in Christensen et al. Baron et al. appears to be a "lost-and-found-type" tag system which does not teach or disclose use of the tag associated with information provided from a seller with products, and relating to the seller or the product to draw the user back to the seller. Furthermore, combining Baron et al. and Christensen et al. does not result in tags associated with products. Applicant finds no suggestion to combine labels with products as recited by Applicant.

Rejection of Claims 3, 13, and 20 under 35 U.S.C. § 103 over Baron et al. in view of Dlugos, Sr. et al. and further in view of Markman.

Claims 3, 13, and 20 stand rejected under 35 U.S.C. § 103 over Baron (U.S. Patent 5,809,481) in view of Dlugos, Sr. et al. (U.S. Patent 5,153,842) and further in view of Markman (U.S. Patent 5,794,213).

Claims 3, 13, and 20 recite "...the first **information** is contained in **a selection of color** on the label." (Bold added) The label conveys a message to the user using colors on the label. Neither Baron et al., Dlugos, Sr. et al., nor Markman suggest or disclose labels providing information to the user by way of colors.

Applicant understands Markman to suggest color coding tags used by a vendor to group and sort articles such as dry cleaning. The claimed invention uses color to convey information about a product to a purchaser or potential purchaser of the product. Information conveyed by color offers similar advantages to information conveyed through shapes discussed above. (See Spec. pg. 34, lines 6-9) Trademarks often rely on selections of color to gain attention of potential consumers. Distinctive color selection come to mind considering such trademarks as Pepsi®, Coke®, or Gatorade®. Because there is no suggestion in the references to use a selection of color to convey information on a label related to a product, Applicant submits that claim 3 is in condition for allowance.

Rejection of Claims 15 and 22 under 35 U.S.C. § 103 over Dlugos, Sr. et al. as applied to claims 11 and 18 and further in view of Christensen et al.

Claims 15 and 22 stand rejected under 35 U.S.C. § 103 over Dlugos, Sr. et al. (U.S. Patent 5,153,842) as applied to claims 11 and 18 respectively and further in view of Christensen et al. (U.S. Patent 5,710,886).

Claims 15 and 22 recites a computer-readable medium associated with a product. Therefore, Applicant asserts claims 15 and 22 are allowable on the same grounds asserted in support of claim 5 above. As in Baron et al. above, Applicant finds no computer-readable labels associated with a product in Dlugos, Sr. et al. Nor, does Applicant find computer-readable medium configured to be read by a purchaser's computer in Dlugos, Sr. et al.

Rejection of Claim 16 under 35 U.S.C. § 103 over Dlugos, Sr. et al. as applied to claim 11 and further in view of Baron et al.

Claim 16 stands rejected under 35 U.S.C. § 103 over Dlugos, Sr. et al. (U.S. Patent 5,153,842) as applied to claim 11 and further in view of Baron et al. (U.S. Patent 5,809,481).

Claim 16 recites a hang tag associated with a label which is associated with a product. Baron et al. appears to be a "lost-and-found-type" tag system which does not teach or disclose use of a tag with products. Dlugos, Sr. et al. appears to disclose labels associated with parcels Furthermore, combining Baron et al. and Dlugos, Sr. et al. does not result in tags associated with products. Applicant finds no suggestion to combine labels with products.

All other claims not specifically discussed above depend either directly or indirectly from independant claims which Applicant respectfully asserts are allowable. Therefore, Applicant asserts these claims are allowable by way of their dependency.

The remaining amendments to the specification and claims were made to correct minor, technical errors.

In view of the foregoing, Applicant respectfully requests reconsideration of all pending claims and submits that claims 1-26 are in condition for immediate allowance. In the event the Examiner finds any remaining impediment to the prompt allowance of any of these claims which could be clarified in a telephone conference, the Examiner is respectfully urged to initiate the same with the undersigned.

DATED this 6th day of November, 2000.

Respectfully submitted,

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